

Application No. 10/606,645
Amendment dated October 5, 2005
After Non-Final Office Action of July 5, 2005

Docket No.: 08212/0200288-US0/NC28809US

REMARKS

Claims 1-5, 7-13, 15-17, 19, and 20 are now pending in this Application. The second non-final (OA) dated July 5, 2005 objected to claims 7, 15, and 19 as being dependent upon a rejected claim, but indicated these claims would be allowable if rewritten in independent form. The OA also rejected claims 1-5, 8-13, 16, 17, and 20. The OA further indicates that specification is objected to. A listing of the claims is provided, but none of the claims are amended. Applicants submit that the pending claims are patentable for the reasons discussed in detail below.

The 35 U.S.C. §112, first paragraph objection to the specification:

Section 2 of the OA indicates that the specification is objected to under 35 U.S.C. §112, first paragraph, as failing to provide support for the invention as now claimed. In particular, the OA indicates that the specification does not provide an enabling disclosure to support the claimed step of "determining when the removed cluster member has been rebooted." This limitation appears in independent claims 1, 9, 17, and 20.

Confusingly, this limitation was copied from original claim 6, which the prior office action indicated would be allowable if rewritten in independent form, and which applicants incorporated into the independent claims purely as an expedient to get some claims issued and without conceding any limitation in the scope of the invention. Nevertheless, applicants point to the specification as filed on page 7, lines 14-21, which states:

The script initiates a reboot by contacting each cluster member, providing an attribute that causes each member to temporarily be removed from the cluster, and then providing an attribute that causes the reboot operation to begin. The script then detects the loss of contact with the device and attempts to re-establish contact. When the script has established contact, it internally indicates that that device is now rebooted and informs the administrator which device has been rebooted.

Thus, the specification makes it clear that in at least one embodiment, re-establishing contact after reboot discloses the claimed step of determining that a removed cluster member has been rebooted.

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Accordingly, the objection to the specification under 35 U.S.C. §112, first paragraph should be withdrawn.

The 35 U.S.C. §112, first paragraph rejection of Claims 1, 9, 17, and 20:

In conjunction with the above objection to the specification, section 4 of the OA indicates that Claims 1, 9, 17, and 20 are rejected 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the OA states that these claims were rejected for the reasons set forth in the objection to the specification. Accordingly, we traverse the rejection, and direct the Examiner's attention to the specification on page 7, lines 10-21. For the reasons discussed above, the rejection of Claims 1, 9, 17, and 20 are rejected 35 U.S.C. §112, first paragraph should be withdrawn.

The 35 U.S.C. §102 rejection of Claims 1-5, 8-13, 16, and 17 over Agha:

Section 6 of the FOA indicates that Claims 1-5, 8-13, 16, and 17 are rejected under 35 U.S.C. §102(b) as being anticipated by Agha et al. (U.S. Patent No. 6,044,461, hereinafter referred to as Agha). Agha is directed to restarting "only affected system program code levels of a computer system in response to a program code update to one or more system program code levels in the computer system." (Agha, abstract.) Notably, the rejection does not indicate any portion of Agha that discloses the limitation that is the subject of the above rejection under 35 U.S.C. §112, first paragraph. Accordingly, applicants contend that Agha does not disclose or suggest all of the limitations of independent Claims 1, 9, and 17.

Applicants also disagree that Agha discloses or suggests a cluster. The specification states that the "term 'cluster' refers to a group of nodes configured to act as a single node." (Spec., pg. 3, lines 3-4.) The specification also states that the "term 'node' means a device that implements IP." (Spec., pg. 2, lines 26-27.) Thus, the claim term "cluster" has its well known plain meaning in

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the art, of a group of devices that are configured to act as a single device. Agha does not disclose or suggest a group of devices configured to act as a single device.

The OA cites a portion of Agha's first claim as disclosing applicants' limitation of determining cluster members. Specifically, the OA cites the portion of Agha that states "determining which of the plurality of system program code levels are affected by the pending program code update." (Agha, col. 9, lines 33-35.) Thus, the OA appears to equate a program code level of Agha with a cluster member of applicants' claims. Applicants respectfully disagree that a program code level discloses or suggests a cluster member. Clearly, a program code level does not disclose or suggest a device, so Agha does not disclose or suggest the claimed limitation of determining cluster members.

Also, Agha does not disclose or suggest rebooting each of the cluster members while at least one of the cluster members remains active. The OA cites the title and abstract of Agha as disclosing the preamble of independent claims 1, 9, and 17, which include a method, system, and apparatus for rebooting a cluster, respectively. The title of Agha is "Computer System And Method Of Selectively Rebooting The Same In Response To A System Program Code Update." Thus, the OA appears to equate a computer system with a cluster of applicants' claims. Agha states that "a need exists for a manner of minimizing the time associated with rebooting a computer system as a result of [] program code updates." (Agha, col. 2, lines 32-34.) Agha discloses a technique whereby "restarting only affected system program code levels in response to a program code update, the time required to perform many program code updates may be reduced. As a result, the downtime for the computer system may be minimized . . ." (Agha, col. 2, lines 54-58.) However, Agha does not disclose or suggest that such downtime is eliminated.

On the contrary, Agha requires "restart of the operating system and the remainder of the computer system 10 [to be] performed in a manner known in the art." (Agha, col. 9, lines 1-3.) Consequently, Agha requires that all of the program code levels must be rendered inactive for some period of time and restarted to restart the computer system. Agha recognizes that their disclosed technique is not able to maintain active operation. Instead, Agha simply discloses a technique for

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pre-loading updated modules. (See Agha, col. 8, lines 5-67.) However, Agha still requires linking with the operating system to accomplish rebooting. Since linking is performed upon restarting the operating system, and Agha teaches restarting an operating system in a manner known in the art, Agha teaches away from the claim requirement of having at least one cluster member remain active while other cluster members are being rebooted.

For at least the reasons above, the rejection of independent claims 1, 9, and 17 under 35 U.S.C. §102(b) should be withdrawn. Further, dependent claims include all of the limitations of the independent claims from which the dependent claims depend. Thus, dependent claims are patentable for at least the same reasons as the corresponding independent claims. Accordingly, the rejection of dependent claims 2-5, 8, 10-13, and 16 under 35 U.S.C. §102(b) should also be withdrawn.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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